

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

MACEO SPATES, #1199722,

Petitioner,

v.

ACTION NO. 2:11cv284

HAROLD CLARKE,
Director, Virginia Department of Corrections,

Respondent.

ORDER

Petitioner, a Virginia inmate, has submitted a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The Petition alleges violation of federal rights pertaining to Petitioner's convictions on May 8, 2007, in the Circuit Court for the City of Virginia Beach for abduction, rape, unlawful wounding, and petit larceny. As a result of the convictions, Petitioner was sentenced to serve thirty-four years in the Virginia penal system.

It is ORDERED that Respondent file within thirty (30) days from the date of this Order an answer to the petition conforming to the requirements of Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts, together with the attachments specified in Rule 5. Without limiting the answer, Respondent shall advise whether Petitioner has exhausted his state court remedies with respect to the issues raised in the federal petition. Petitioner may, if he desires, file a response to Respondent's answer within twenty-one (21) days after receipt of the answer.

If Petitioner has exhausted his state court remedies pertaining to his allegations by direct appeal or by a state habeas corpus proceeding, Respondent is requested to cause the state court records and transcripts of Petitioner's original trial and related proceedings and the state court's habeas corpus transcripts and records, if any, applicable to the grounds alleged in the petition, to be

forwarded to this Court for examination WITHIN THIRTY (30) DAYS OF THE DATE OF THIS ORDER. State court records and transcripts will be carefully maintained and will be returned to the Clerk of the proper court upon termination of this proceeding.

Upon the filing of Respondent's answer, any response by Petitioner, and the receipt of the state court records and transcripts, this Court will enter such further order as may be appropriate.

Petitioner is REMINDED of the requirements of Rule 5 of the Federal Rules of Civil Procedure. Petitioner must serve a copy of every pleading and every written motion, notice and similar papers on the Respondent. Service shall be made by mailing a copy of the document to counsel for Respondent. Petitioner is ADVISED that no document submitted by him will be filed in or considered by the Court unless he also attaches a certificate stating that Petitioner has served or mailed copies of the document to counsel for Respondent. The certificate should also show the date and manner of service. The Court has enclosed a sample Certificate of Service that Petitioner may copy and use for this purpose.

Further, Petitioner must immediately advise the Court of his new address in the event he is transferred, released, or otherwise relocated while the action is pending. FAILURE TO DO SO MAY RESULT IN DISMISSAL OF THE ACTION.

The Clerk shall mail a copy of this Order to Petitioner, to Respondent and to the Attorney General of Virginia.

Norfolk, Virginia
September 6, 2011

/s/
Tommy E. Miller
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing (1)
was mailed this (2) _____ day of (3) _____, to
(4) _____
at _____ (5)
.

(Your Signature)

Instructions

After the Court has notified Respondent(s) that an action has been commenced, YOU must send a copy of every motion, pleading or document to counsel for Respondent(s). If you do not send a copy to counsel for Respondent(s), the court will not be able to consider your document.

You must prepare and submit one certificate of service for EACH motion, pleading or document you wish to have considered by the court. You may use a photocopy of this form or use one of your own that follows this format.

Complete each blank as directed:

- (1) Describe the document you are submitting to the court and sending to counsel for Respondent(s). (Remember: you should attach a Certificate of Service to each motion, pleading or document you wish to have considered by the court.)
- (2) Day of the month that you give the document to officials for mailing to counsel for Respondent(s).
- (3) Month and year.
- (4) Name of person(s) to whom you are sending a copy of the document.
- (5) Address(es) that copy is being mailed to.

NOTE: YOU MUST SIGN THIS FORM. The court will not accept this form without an original signature.